

Calendar No. 216

101ST CONGRESS
1ST SESSION

S. 933

[Report No. 101-116]

To establish a clear and comprehensive prohibition of discrimination on the basis
of disability.

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIETH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, Mr. HEINZ, Mr. GLENN, Mr. SHELBY, Mr. PRESSLER, Mr. HOLLINGS, Mr. SANFORD, Mr. WILSON, Mr. SASSEB, Mr. DIXON, Mr. KERREY, Mr. ROBB, Mr. FOWLER, Mr. ROCKEFELLER, Mr. BIDEN, Mr. BENTSEN, Mr. SPECTER, Mr. DECONCINI, Mr. KOHL, Mr. LAUTENBERG, Mr. D'AMATO, Mr. DOLE, Mr. HATCH, Mr. WARNER, Mr. PRYOR, and Mr. BRADLEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

AUGUST 30, 1989

Reported, under authority of the order of the Senate of August 2 (legislative day, January 3), 1989, by Mr. KENNEDY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish a clear and comprehensive prohibition of
discrimination on the basis of disability.

(a) ~~SHORT TITLE.~~—This Act may be cited as the
“Americans with Disabilities Act of 1980”.

6 (b) ~~TABLE OF CONTENTS.~~—The table of contents is as
7 follows:

Sec. 3. Definitions.

Sec. 101. Forms of discrimination prohibited.

Sec. 205. Enforcement.

Sec. 305. Enforcement.

Sec. 405. Enforcement.

Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.

Sec. 602. Prohibition against retaliation.

Sec. 603. State immunity.

Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.

Sec. 605. Attorney's fees.

Sec. 606. Effective date.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) some 43,000,000 Americans have one or more
4 physical or mental disabilities, and this number is in-
5 creasing as the population as a whole is growing older;

6 (2) historically, society has tended to isolate and
7 segregate individuals with disabilities, and, despite
8 some improvements, such forms of discrimination
9 against individuals with disabilities continue to be a se-
10 rious and pervasive social problem;

11 (3) discrimination against individuals with disabil-
12 ities persists in such critical areas as employment,
13 housing, public accommodations, education, transpor-
14 tation, communication, recreation, institutionalization,
15 health services, voting, and access to public services;

16 (4) unlike individuals who have experienced dis-
17 crimination on the basis of race, sex, national origin,
18 religion, or age, individuals who have experienced dis-
19 crimination on the basis of disability have often had no
20 legal recourse to redress such discrimination;

1 (5) individuals with disabilities continually encounter
2 various forms of discrimination, including outright
3 intentional exclusion, the discriminatory effects of
4 architectural, transportation, and communication barriers,
5 overprotective rules and policies, failure to make
6 modifications to existing facilities and practices, exclusionary
7 qualification standards and criteria, segregation,
8 and relegation to lesser services, programs, activities,
9 benefits, jobs, or other opportunities;

10 (6) census data, national polls, and other studies
11 have documented that people with disabilities, as a
12 group, occupy an inferior status in our society, and are
13 severely disadvantaged socially, vocationally, economically,
14 and educationally;

15 (7) individuals with disabilities are a discrete and
16 insular minority who have been faced with restrictions
17 and limitations, subjected to a history of purposeful unequal
18 treatment, and relegated to a position of political powerlessness
19 in our society, based on characteristics that are beyond the control
20 of such individuals and resulting from stereotypic assumptions not
21 truly indicative of the individual ability of such individuals to
22 participate in, and contribute to, society;

24 (8) the Nation's proper goals regarding individuals
25 with disabilities are to assure equality of opportunity,

1 full participation, independent living, and economic
2 self-sufficiency for such individuals; and

3 (9) the continuing existence of unfair and unneces-
4 sary discrimination and prejudice denies people with
5 disabilities the opportunity to compete on an equal
6 basis and to pursue those opportunities for which our
7 free society is justifiably famous, and costs the United
8 State billions of dollars in unnecessary expenses result-
9 ing from dependency and nonproductivity.

10 (b) PURPOSE.—It is the purpose of this Act—

11 (1) to provide a clear and comprehensive national
12 mandate for the elimination of discrimination against
13 individuals with disabilities;

14 (2) to provide clear, strong, consistent, enforceable
15 standards addressing discrimination against individuals
16 with disabilities;

17 (3) to ensure that the Federal Government plays
18 a central role in enforcing the standards established in
19 this Act on behalf of individuals with disabilities; and

20 (4) to invoke the sweep of congressional authority,
21 including its power to enforce the fourteenth amend-
22 ment and to regulate commerce in order to address the
23 major areas of discrimination faced day-to-day by
24 people with disabilities.

25 **SEC. 2. DEFINITIONS.**

26 As used in this Act:

(1) **AUXILIARY AIDS AND SERVICES.**—The term “auxiliary aids and services” shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) **DISABILITY.**—The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) **REASONABLE ACCOMMODATION.**—The term “reasonable accommodation” shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

1 (A) Denying the opportunity to participate in
2 or benefit from a service, program, activity, bene-
3 fit, job, or other opportunity.

4 (B) Affording an opportunity to participate in
5 or benefit from a service, program, activity, bene-
6 fit, job, or other opportunity that is not equal to
7 that afforded others.

8 (C) Providing a service, program, activity,
9 benefit, job, or other opportunity that is less effec-
10 tive than that provided to others.

11 (D) Providing a service, program, activity,
12 benefit, job, or other opportunity that is different
13 or separate, unless such action is necessary to
14 provide the individual or class of individuals with
15 a service, program, activity, benefit, job, or other
16 opportunity that is as effective as that provided to
17 others.

18 (E) Aiding or perpetuating discrimination by
19 providing significant assistance to an agency, or-
20 ganization, or individual that discriminates.

21 (F) Denying the opportunity to participate as
22 a member of boards or commissions.

23 (G) Otherwise limiting the enjoyment of any
24 right, privilege, advantage, or opportunity enjoyed
25 by others.

(2) **EQUAL OPPORTUNITY.**—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs.

(3) **OPPORTUNITY TO PARTICIPATE.**—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) **ADMINISTRATIVE METHODS.**—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

1 (C) that perpetuate the discrimination of
2 others who are subject to common administrative
3 control or are agencies of the same State.

4 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall
5 be discriminatory to exclude or otherwise deny equal
6 services, programs, activities, benefits, jobs, or other
7 opportunities to an individual or entity because of the
8 relationship to, or association of, that individual or
9 entity with another individual with a disability.

10 (b) DEFENSES.—

11 (1) IN GENERAL.—It shall be a defense to a
12 charge of discrimination under this Act that an alleged
13 application of qualification standards, selection criteria,
14 performance standards or eligibility criteria that ex-
15 clude or deny services, programs, activities, benefits,
16 jobs, or other opportunities to an individual with a dis-
17 ability has been demonstrated by the covered entity to
18 be both necessary and substantially related to the abil-
19 ity of an individual to perform or participate, or take
20 advantage of the essential components of such particu-
21 lar program, activity, job, or other opportunity and
22 such performance, participation, or taking advantage of
23 such essential components cannot be accomplished by
24 applicable reasonable accommodations, modifications,
25 or the provision of auxiliary aids or services.

(2) **QUALIFICATION STANDARDS.**—The term “qualification standards” may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) **COMMISSION.**—The term “Commission” means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) **EMPLOYEE.**—

(A) **IN GENERAL.**—The term “employee” means an individual employed by an employer.

(B) **EXCEPTION.**—The term “employee” shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such offi-

1 eer's personal staff, or an appointee on the policy
2 making level or an immediate adviser with respect
3 to the exercise of the constitutional or legal
4 powers of the office.

5 (C) **LIMITATION ON EXCEPTION.**—The ex-
6 ception contained in subparagraph (B) shall not
7 include employees subject to the civil service laws
8 of a State government, governmental agency, or
9 political subdivision.

10 (2) **EMPLOYER.**—

11 (A) **IN GENERAL.**—The term “employer”
12 means a person engaged in an industry affecting
13 commerce who has 15 or more employees for
14 each working day in each of 20 or more calendar
15 weeks in the current or preceding calendar year,
16 and any agent of such a person.

17 (B) **EXCEPTIONS.**—The term “employer”
18 does not include—

19 (i) the United States, a corporation
20 wholly owned by the government of the
21 United States, or an Indian tribe; or

22 (ii) a bona fide private membership club
23 (other than a labor organization) that is
24 exempt from taxation under section 501(c) of
25 the Internal Revenue Code of 1986.

(4) **PERSON, ETC.**—The terms “person”, “labor organization”, “employment agency”, “commerce”, and “industry affecting commerce”, shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) **QUALIFIED INDIVIDUAL WITH A DISABILITY.**—The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) **GENERAL RULE.**—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) **CONSTRUCTION.**—As used in subsection (a), the term “discrimination” includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified in-

1 dividual with a disability who is an applicant or em-
 2 ployee unless such entity can demonstrate that the ac-
 3 commodation would impose an undue hardship on the
 4 operation of its business;

5 (2) the denial of employment opportunities by a
 6 covered employer, employment agency, labor organiza-
 7 tion, or joint labor-management committee to an appli-
 8 cant or employee who is a qualified individual with a
 9 disability if the basis for such denial is because of the
 10 need of the individual for reasonable accommodation;
 11 and

12 (3) the imposition or application by a covered em-
 13 ployer, employment agency, labor organization or joint
 14 labor-management committee of qualification standards,
 15 tests, selection criteria or eligibility criteria that iden-
 16 tify or limit, or tend to identify or limit, a qualified in-
 17 dividual with a disability, or any class of qualified indi-
 18 viduals with disabilities, unless such standards, tests or
 19 criteria can be shown by such entity to be necessary
 20 and substantially related to the ability of an individual
 21 to perform the essential functions of the particular em-
 22 ployment position.

23 **SEC. 202. POSTING NOTICES.**

24 Every employer, employment agency, labor organiza-
 25 tion, or joint labor-management committee covered under

1 this title shall post notices in an accessible format to appli-
 2 cants, employees, and members describing the applicable pro-
 3 visions of this Act, in the manner prescribed by section 711
 4 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

5 **SEC. 204. REGULATIONS.**

6 Not later than 180 days after the date of enactment of
 7 this Act, the Commission shall issue regulations in an acces-
 8 sible format to carry out this title in accordance with sub-
 9 chapter II of chapter 5 of title 5, United States Code.

10 **SEC. 205. ENFORCEMENT.**

11 The remedies and procedures set forth in sections 706,
 12 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C.
 13 2000e-5, 2000e-8, and 2000e-9), and the remedies and pro-
 14 cedures available under section 1981 of the Revised Statutes
 15 (42 U.S.C. 1981) shall be available, with respect to any indi-
 16 vidual who believes that he or she is being or about to be
 17 subjected to discrimination on the basis of disability in viola-
 18 tion of any provisions of this Act, or regulations promulgated
 19 under section 204, concerning employment.

20 **TITLE III—PUBLIC SERVICES**

21 **SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A** 22 **DISABILITY.**

23 As used in this title, the term “qualified individual with
 24 a disability” means an individual with a disability who, with
 25 or without reasonable modifications to rules, policies and

1 practices, the removal of architectural, communication, and
 2 transportation barriers, or the provision of auxiliary aids and
 3 services, meets the essential eligibility requirements for the
 4 receipt of services or the participation in programs or activi-
 5 ties provided by a State or agency or political subdivision of a
 6 State or board, commission or other instrumentality of a
 7 State and political subdivision.

8 **SEC. 302. DISCRIMINATION.**

9 No qualified individual with a disability shall, by reason
 10 of his or her disability, be excluded from the participation in,
 11 be denied the benefits of, or be subjected to discrimination by
 12 a State, or agency or political subdivision of a State or board,
 13 commission, or other instrumentality of a State and political
 14 subdivision.

15 **SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION**
 16 **CONSIDERED DISCRIMINATORY.**

17 (a) **DEFINITION.**—As used in this title, the term “public
 18 transportation” means transportation by bus or rail, or by
 19 any other conveyance (other than air travel) that provides the
 20 general public with general or special service (including char-
 21 ter service) on a regular and continuing basis.

22 (b) **VEHICLES.**—

23 (1) **NEW BUSES, RAIL VEHICLES, AND OTHER**
 24 **FIXED ROUTE VEHICLES.**—It shall be considered dis-
 25 crimination for purposes of this Act and section 504 of

1 the Rehabilitation Act of 1973 (29 U.S.C. 704) for an
2 individual or entity to purchase or lease a new fixed
3 route bus of any size, a new intercity rail vehicle, a
4 new commuter rail vehicle, a new rapid rail vehicle, a
5 new light rail vehicle to be used for public transportation,
6 tion, or any other new fixed route vehicle to be used
7 for public transportation and for which a solicitation by
8 such individual or entity is made later than 30 days
9 after the date of enactment of this Act, if such bus,
10 rail, or other vehicle is not readily accessible to and
11 usable by individuals with disabilities, including individuals
12 who use wheelchairs.

13 (2) USED VEHICLES.—If an individual or entity
14 purchases or leases a used vehicle after the date of enactment
15 of this Act, such individual or entity shall
16 make demonstrated good faith efforts to purchase or
17 lease a used vehicle that is readily accessible to and
18 usable by individuals with disabilities, including individuals
19 who use wheelchairs.

20 (3) REMANUFACTURED VEHICLES.—If an individual
21 or entity remanufactures a vehicle, or purchases or
22 leases a remanufactured vehicle, so as to extend its
23 usable life for 5 years or more, the vehicle shall, to the
24 maximum extent feasible, be readily accessible to and

1 usable by individuals with disabilities, including individ-
2 uals who use wheelchairs.

3 (c) **PARATRANSIT AS A SUPPLEMENT TO FIXED**
4 **ROUTE PUBLIC TRANSPORTATION SYSTEM.**—If an individ-
5 ual or entity operates a fixed route public transportation
6 system to provide public transportation, it shall be considered
7 discrimination, for purposes of this Act and section 504 of the
8 Rehabilitation Act of 1973 (29 U.S.C. 794), for such individ-
9 ual or entity to fail to provide paratransit or other special
10 transportation services sufficient to provide a comparable
11 level of services as is provided to individuals using fixed route
12 public transportation to individuals with disabilities, including
13 individuals who use wheelchairs, who cannot otherwise use
14 fixed route public transportation and to other individuals as-
15 sociated with such individuals with disabilities in accordance
16 with service criteria established under regulations promulgat-
17 ed by the Secretary of Transportation.

18 (d) **COMMUNITY OPERATING DEMAND RESPONSIVE**
19 **SYSTEMS FOR THE GENERAL PUBLIC.**—If an individual or
20 entity operates a demand responsive system that is used to
21 provide public transportation for the general public, it shall
22 be considered discrimination, for purposes of this Act and
23 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
24 794), for such individual or entity to purchase or lease a new
25 vehicle, for which a solicitation is made later than 30 days

1 after the date of enactment of this Act, that is not readily
2 accessible to and usable by individuals with disabilities, in-
3 cluding individuals who use wheelchairs unless the entity can
4 demonstrate that such system, when viewed in its entirety,
5 provides a level of service to individuals with disabilities
6 equivalent to that provided to the general public.

7 (e) NEW FACILITIES.—For purposes of this Act and
8 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
9 794), it shall be considered discrimination for an individual or
10 entity to build a new facility that will be used to provide
11 public transportation services, including bus service, intercity
12 rail service, rapid rail service, commuter rail service, light
13 rail service, and other service used for public transportation
14 that is not readily accessible to and usable by individuals with
15 disabilities, including individuals who use wheelchairs.

16 (f) ALTERATIONS OF EXISTING FACILITIES.—With re-
17 spect to a facility or any part thereof that is used for public
18 transportation and that is altered by, on behalf of, or for the
19 use of an individual or entity later than 1 year after the date
20 of enactment of this Act, in a manner that affects or could
21 affect the usability of the facility or part thereof, it shall be
22 considered discrimination, for purposes of this Act and sec-
23 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
24 for such individual or entity to fail to make the alterations in
25 such a manner that, to the maximum extent feasible, the al-

tered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to in-

dividuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable

1 to recipients of Federal financial assistance under section 504
2 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

3 (b) SECRETARY OF TRANSPORTATION.—

4 (1) IN GENERAL.—Not later than 240 days after
5 the date of enactment of this Act, the Secretary of
6 Transportation shall promulgate regulations in an ac-
7 cessible format that include standards applicable to fa-
8 cilities and vehicles covered under section 302.

9 (2) CONFORMANCE OF STANDARDS.—Such stand-
10 ards shall be consistent with the minimum guidelines
11 and requirements issued by the Architectural and
12 Transportation Barriers Compliance Board in accord-
13 ance with section 604(b).

14 SEC. 305. ENFORCEMENT.

15 The remedies, procedures, and rights set forth in section
16 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall
17 be available with respect to any individual who believes that
18 he or she is being or about to be subjected to discrimination
19 on the basis of disability in violation of any provisions of this
20 Act, or regulations promulgated under section 304, concern-
21 ing public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) **COMMERCE.**—The term “commerce” means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any foreign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) **IN GENERAL.**—The term “public accommodation” means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) **INCLUSIONS.**—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restau-

1 rants, shopping centers, inns, hotels, and motels
 2 (other than inns, hotels, and motels exempt under
 3 section 201(b)(1) of the Civil Rights Act of 1964
 4 (42 U.S.C. 2000a(b)(1))), terminals used for public
 5 transportation, passenger vehicle service stations,
 6 professional offices of health care providers, office
 7 buildings, sales establishments, personal and
 8 public service businesses, parks, private schools,
 9 and recreation facilities.

10 (3) **PUBLIC TRANSPORTATION.**—The term
 11 “public transportation” means transportation by bus or
 12 rail, or by any other conveyance (other than by air
 13 travel) that provides the general public with general or
 14 special service (including charter service) on a regular
 15 and continuing basis.

16 **SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC**
 17 **ACCOMMODATIONS.**

18 (a) **GENERAL RULE.**—No individual shall be discrimi-
 19 nated against in the full and equal enjoyment of the goods,
 20 services, facilities, privileges, advantages, and accommoda-
 21 tions of any place of public accommodation, on the basis of
 22 disability.

23 (b) **CONSTRUCTION.**—As used in subsection (a), the
 24 term “discriminated against” includes—

1 (1) the imposition or application of eligibility crite-
2 ria that identify or limit, or tend to identify or limit, an
3 individual with a disability or any class of individuals
4 with disabilities from fully and equally enjoying any
5 goods, services, facilities, privileges, advantages, and
6 accommodations;

7 (2) a failure to make reasonable modifications in
8 rules, policies, practices, procedures, protocols, or serv-
9 ices when such modifications may be necessary to
10 afford such privileges, advantages, and accommodations
11 unless the entity can demonstrate that making such
12 modifications would fundamentally alter the nature of
13 such privileges, advantages, and accommodations;

14 (3) a failure to take such steps as may be neces-
15 sary to ensure that no individual with a disability is ex-
16 cluded, denied services, segregated or otherwise treat-
17 ed differently than other individuals because of the ab-
18 sence of auxiliary aids and services, unless the entity
19 can demonstrate that taking such steps would result in
20 undue burden;

21 (4)(A) a failure to remove architectural and com-
22 munication barriers that are structural in nature in ex-
23 isting facilities, and transportation barriers in existing
24 vehicles used by an establishment for transporting indi-
25 viduals (not including barriers that can only be re-

1 moved through the retrofitting of vehicles by the instal-
2 lation of a hydraulic or other lift); where such removal
3 is readily achievable; and

4 (B) where an entity can demonstrate that removal
5 of a barrier under subparagraph (A) is not readily
6 achievable, a failure to make such goods, services, fa-
7 cilities, privileges, advantages, and accommodations
8 available through alternative methods if such methods
9 are readily achievable;

10 (5) with respect to a facility or part thereof that is
11 altered by, on behalf of, or for the use of an establish-
12 ment later than one year after the date of enactment of
13 this Act in a manner that affects or could affect the
14 usability of the facility or part thereof, a failure to
15 make the alterations in such a manner that, to the
16 maximum extent feasible, the altered portion of the fa-
17 cility, the path of travel to the altered area, and the
18 bathrooms, telephones, and drinking fountains serving
19 the remodeled area, are readily accessible to and
20 usable by individuals with disabilities;

21 (6) a failure to make facilities constructed for first
22 occupancy later than 30 months after the date of en-
23 actment of this Act readily accessible to and usable by
24 individuals with disabilities, except where an entity can
25 demonstrate that it is structurally impracticable to do

1 so, in accordance with standards set forth or incorpo-
 2 rated by reference in regulations issued under this title;
 3 and

4 (7) in the case of an entity that uses a vehicle to
 5 transport individuals not covered under section 303 or
 6 403—

7 (A) a failure to provide a level of transporta-
 8 tion services to individuals with disabilities, in-
 9 cluding individuals who use wheelchairs, equiva-
 10 lent to that provided for the general public; and

11 (B) purchasing or leasing a new bus, or vehi-
 12 cle that can carry in excess of 12 passengers, for
 13 which solicitations are made later than 30 days
 14 after the date of enactment of this Act, that is not
 15 readily accessible to and usable by individuals
 16 with disabilities, including individuals who use
 17 wheelchairs.

18 **SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC**
 19 **TRANSPORTATION SERVICES PROVIDED BY**
 20 **PRIVATE ENTITIES.**

21 (a) **GENERAL RULE.**—No individual shall be discrimi-
 22 nated against on the basis of disability in the full and equal
 23 enjoyment of public transportation services provided by a pri-
 24 vately operated entity that is primarily engaged in the busi-
 25 ness of transporting people, but is not in the principal busi-

1 ness of providing air transportation, and whose operations
2 affect commerce.

3 (b) CONSTRUCTION.—As used in subsection (a), the
4 term “discrimination against” includes—

5 (1) the imposition or application by an entity of
6 eligibility criteria that identify or limit, or tend to iden-
7 tify or limit, an individual with a disability or any class
8 of individuals with disabilities from fully enjoying the
9 public transportation services provided by the entity;

10 (2) the failure of an entity to—

11 (A) make reasonable modifications consistent
12 with those required under section 402(b)(2);

13 (B) provide auxiliary aids and services con-
14 sistent with the requirements of section 402(b)(3);
15 and

16 (C) remove barriers consistent with the re-
17 quirements of section 402(b)(4); and

18 (3) the purchase or lease of a new vehicle (other
19 than an automobile) that is to be used to provide public
20 transportation services, and for which a solicitation is
21 made later than 30 days after the date of enactment of
22 this Act, that is not readily accessible to and usable by
23 individuals with disabilities, including individuals who
24 use wheelchairs.

1 **SEC. 404. REGULATIONS.**

2 (a) **ACCESSIBILITY STANDARDS.**—Not later than 240
3 days after the date of enactment of this Act, the Secretary of
4 Transportation shall issue regulations in an accessible format
5 that shall include standards applicable to facilities and vehi-
6 cles covered under section 402.

7 (b) **OTHER PROVISIONS.**—Not later than 240 days after
8 the date of enactment of this Act, the Attorney General shall
9 issue regulations in an accessible format to carry out the re-
10 maining provisions of this title not referred to in subsection
11 (a) that include standards applicable to facilities and vehicles
12 covered under section 402.

13 (c) **STANDARDS.**—Standards included in regulations
14 issued under subsections (a) and (b) shall be consistent with
15 the minimum guidelines and requirements issued by the Ar-
16 chitectural and Transportation Barriers Compliance Board in
17 accordance with section 604(b).

18 **SEC. 405. ENFORCEMENT.**

19 Sections 802(i), 812, and 814 (a) and (d) of the Fair
20 Housing Act (42 U.S.C. 3602(i), 3612, and 3614 (a) and (d))
21 shall be available with respect to any aggrieved individual,
22 except that—

23 (1) any reference to a discriminatory housing
24 practice or breach of a conciliation agreement shall be
25 considered to be a reference to a practice that is dis-
26 criminatory under this title concerning a public accom-

1 modulation or public transportation service operated by a
2 private entity; and

3 (2) subparagraph (B) of paragraph (1) and para-
4 graphs (2) and (3) of subsection (a) of section 812 shall
5 not apply.

6 **TITLE V—TELECOMMUNICATIONS**

7 **RELAY SERVICES**

8 **SEC. 501. DEFINITIONS.**

9 As used in this title:

10 (1) **COMMISSION.**—The term “Commission”
11 means the Federal Communications Commission.

12 (2) **TELECOMMUNICATIONS RELAY SERVICES.**—
13 The term “telecommunications relay services” means
14 services that enable simultaneous communication to
15 take place between individuals who use TDDs or other
16 nonvoice terminal devices and individuals who do not
17 use such devices.

18 (3) **TDD.**—The term “TDD” means a Telecom-
19 munication Device for the Deaf, a machine that em-
20 ploys graphic communications in the transmission of
21 coded signals through the nationwide telecommunica-
22 tions system.

23 **SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.**

24 (a) **GENERAL RULE.**—It shall be considered discrimina-
25 tion for purposes of this Act for any common carrier, as de-

1 fined in section 3(h) of the Communications Act of 1934 (47
2 U.S.C. 153(h)), that offers telephone services to the general
3 public, to fail to provide, not later than 1 year after the date
4 of enactment of this Act, interstate or intrastate telecom-
5 munication relay services so that such services provide indi-
6 viduals who use nonvoice terminal devices because of disabil-
7 ities with opportunities for communications that are equal to
8 those provided to their customers who are able to use voice
9 telephone services, except that it shall not be considered dis-
10 crimination for such a common carrier to fail to provide such
11 services in any State to which subsection (b) applies if such
12 services are provided under subsection (b).

13 (b) STATE DISCRIMINATION.—It shall be considered
14 discrimination by a State, that designates an entity to provide
15 interstate or intrastate telecommunication relay services to
16 individuals throughout the entire State in a manner consist-
17 ent with regulations issued by the Commission, for purposes
18 of this Act, for such State, through the designated entity, to
19 fail to provide, not later than 1 year after the date of enact-
20 ment of this Act, interstate or intrastate telecommunication
21 relay services so that such services provide individuals who
22 use nonvoice terminal devices because of disabilities with op-
23 portunities for communications that are equal to those pro-
24 vided to their customers who are able to use voice telephone
25 services.

1 (e) **CONSTRUCTION.**—Nothing in this title shall be con-
 2 strued to discourage or impair the development of improved
 3 or future technology designed to improve access to telecom-
 4 munications services for individuals with disabilities.

5 **SEC. 502. REGULATIONS.**

6 Not later than 180 days after the date of enactment of
 7 this Act, the Commission shall issue regulations to carry out
 8 this title, and such regulations shall establish minimum stand-
 9 ards and guidelines for telecommunications relay services.

10 **SEC. 504. ENFORCEMENT.**

11 (a) **CIVIL ACTIONS.**—Section 802(i), 813, and 814 (a)
 12 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,
 13 and 3614 (a) and (d)) shall be available with respect to any
 14 aggrieved individual, except that—

15 (1) any reference to a discriminatory housing
 16 practice or breach of a conciliation agreement shall be
 17 considered to be a reference to a practice that is dis-
 18 criminatory under this title concerning the provision of
 19 an appropriate interstate or intrastate telecommunica-
 20 tion relay service; and

21 (2) subparagraph (B) of paragraph (1) and para-
 22 graphs (2) and (3) of subsection (a) and subsection (d)
 23 of section 813 shall not apply.

24 (b) **ADMINISTRATIVE ENFORCEMENT.**—

1 (1) **IN GENERAL.**—The Commission shall enforce
2 the provisions of this title.

3 (2) **APPLICABLE ENFORCEMENT PROVISIONS.**—
4 The remedies, procedures, and rights set forth in sec-
5 tions 206, 207, 208, and 209 of the Communications
6 Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and
7 in title IV of the Communications Act of 1934 (47
8 U.S.C. 401 et seq.) shall apply with respect to the en-
9 forcement of this title, except that nothing in this sub-
10 section shall be construed to limit or restrict in any
11 manner the remedies, procedures, or rights set forth in
12 subsection (a).

13 (3) **CEASE AND DESIST ORDERS.**—Whenever,
14 after full opportunity for hearing, on a complaint or
15 under an order for investigation and hearing made by
16 the Commission on the initiative of the Commission,
17 the Commission shall be of the opinion that any ear-
18 rier, or any State as described in section 502(b), is or
19 will be in violation of this title or of any regulation
20 issued under this title, the Commission shall—

21 (A) order that the carrier or State cease and
22 desist from such violation to the extent that the
23 Commission finds that such violation exists or will
24 exist; and

1 (B) take other actions as it finds appropriate
2 and necessary.

3 (4) ~~PENALTIES.~~—

4 (A) ~~IN GENERAL.~~—Any carrier or State to
5 which section 502(b) applies that knowingly fails
6 or neglects to comply with this title or of any reg-
7 ulation or order made by the Commission in ear-
8 rying out this title shall forfeit to the United
9 States the sum of \$10,000 for each such offense.

10 (B) ~~SEPARATE OFFENSES.~~—Each distinct
11 violation of the provisions of this title shall be a
12 separate offense under subparagraph (A). In case
13 of a continuing violation, each day shall be con-
14 sidered a separate offense.

15 (C) ~~RECOVERING FORFEITURES.~~—Such for-
16 feitures shall be payable and recoverable in the
17 same manner as prescribed in section 504 of the
18 Communications Act of 1934 (47 U.S.C. 504).

19 **TITLE VI—MISCELLANEOUS**
20 **PROVISIONS**

21 **SEC. 601. CONSTRUCTION.**

22 (a) ~~REHABILITATION ACT OF 1973.~~—Nothing in this
23 Act shall be construed to reduce the scope of coverage or
24 apply a lesser standard than the coverage required or the
25 standards applied under title V of the Rehabilitation Act of

1 1973 (29 U.S.C. 790 et seq.) or the regulations issued by
2 Federal agencies pursuant to such title.

3 (b) **OTHER LAWS.**—Nothing in this Act shall be con-
4 strued to invalidate or limit any other Federal law or law of
5 any State or political subdivision of any State or jurisdiction
6 that provides greater protection for the rights of individuals
7 with disabilities than are afforded by this Act.

8 (c) **RELATIONSHIP AMONG TITLES.**—The require-
9 ments contained in titles I through V shall be construed in a
10 manner that is consistent with the other provisions of this
11 Act, and any apparent conflict between provisions of this Act
12 shall be resolved by reference to the title that specifically
13 covers the type of action in question.

14 **SEC. 602. PROHIBITION AGAINST RETALIATION.**

15 No individual shall discriminate against any other indi-
16 vidual because such other individual has opposed any act or
17 practice made unlawful by this Act or because such other
18 individual made a charge, testified, assisted, or participated
19 in any manner in an investigation, proceeding, or hearing
20 under this Act.

21 **SEC. 603. STATE IMMUNITY.**

22 A State shall not be immune under the eleventh amend-
23 ment to the Constitution of the United States from an action
24 in Federal court for a violation of this Act. In any action
25 against a State for a violation of the requirements of this Act,

1 remedies (including remedies both at law and in equity) are
 2 available for such a violation to the same extent as such rem-
 3 edies are available for such a violation in an action against
 4 any public or private entity other than a State.

5 **SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**
 6 **PORTATION BARRIERS COMPLIANCE BOARD.**

7 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6
 8 months after the date of enactment of this Act, the Architee-
 9 tural and Transportation Barriers Compliance Board shall
 10 issue minimum guidelines that shall supplement the existing
 11 Minimum Guidelines and Requirements for Accessible Design
 12 for purposes of sections 304 and 404.

13 (b) **CONTENTS OF GUIDELINES.**—The guidelines issued
 14 under subsection (a) shall establish additional requirements,
 15 consistent with this Act, to ensure that buildings, facilities,
 16 and vehicles are accessible, in terms of architecture and
 17 design, transportation, and communication, to individuals
 18 with disabilities.

19 **SEC. 605. ATTORNEY'S FEES.**

20 In any action or administrative proceeding commenced
 21 pursuant to this Act, the court, or agency, in its discretion,
 22 may allow the prevailing party, other than the United States,
 23 a reasonable attorney's fee, including litigation expenses, and
 24 costs, and the United States shall be liable for the foregoing
 25 the same as a private individual.

1 **SEC. 606. EFFECTIVE DATE.**

2 This Act shall become effective on the date of
3 ~~enactment.~~

4 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) *SHORT TITLE.*—This Act may be cited as the
6 “Americans with Disabilities Act of 1989”.

7 (b) *TABLE OF CONTENTS.*—The table of contents is as
8 follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.

Sec. 102. Discrimination.

Sec. 103. Defenses.

Sec. 104. Posting notices.

Sec. 105. Regulations.

Sec. 106. Enforcement.

Sec. 107. Effective date.

TITLE II—PUBLIC SERVICES

Sec. 201. Definition.

Sec. 202. Discrimination.

*Sec. 203. Actions applicable to public transportation provided by public entities
considered discriminatory.*

Sec. 204. Regulations.

Sec. 205. Enforcement.

Sec. 206. Effective date.

**TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES
OPERATED BY PRIVATE ENTITIES**

Sec. 301. Definitions.

Sec. 302. Prohibition of discrimination by public accommodations.

*Sec. 303. New construction in public accommodations and potential places of em-
ployment.*

*Sec. 304. Prohibition of discrimination in public transportation services provided
by private entities.*

Sec. 305. Study.

Sec. 306. Regulations.

Sec. 307. Exemption for private clubs and religious organizations.

Sec. 308. Enforcement.

Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.

Sec. 502. Prohibition against retaliation and coercion.

Sec. 503. State immunity.

Sec. 504. Regulations by the architectural and transportation barriers compliance board.

Sec. 505. Attorney's fees.

Sec. 506. Technical assistance.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) *FINDINGS.*—Congress finds that—

3 (1) *some 43,000,000 Americans have one or more*
4 *physical or mental disabilities, and this number is in-*
5 *creasing as the population as a whole is growing older;*

6 (2) *historically, society has tended to isolate and*
7 *segregate individuals with disabilities, and, despite*
8 *some improvements, such forms of discrimination*
9 *against individuals with disabilities continue to be a*
10 *serious and pervasive social problem;*

11 (3) *discrimination against individuals with dis-*
12 *abilities persists in such critical areas as employment,*
13 *housing, public accommodations, education, transporta-*
14 *tion, communication, recreation, institutionalization,*
15 *health services, voting, and access to public services;*

16 (4) *unlike individuals who have experienced dis-*
17 *crimination on the basis of race, sex, national origin,*
18 *religion, or age, individuals who have experienced dis-*

1 *crimination on the basis of disability have often had no*
2 *legal recourse to redress such discrimination;*

3 *(5) individuals with disabilities continually en-*
4 *counter various forms of discrimination, including out-*
5 *right intentional exclusion, the discriminatory effects of*
6 *architectural, transportation, and communication bar-*
7 *riers, overprotective rules and policies, failure to make*
8 *modifications to existing facilities and practices, exclu-*
9 *sionary qualification standards and criteria, segrega-*
10 *tion, and relegation to lesser services, programs, activi-*
11 *ties, benefits, jobs, or other opportunities;*

12 *(6) census data, national polls, and other studies*
13 *have documented that people with disabilities, as a*
14 *group, occupy an inferior status in our society, and are*
15 *severely disadvantaged socially, vocationally, economi-*
16 *cally, and educationally;*

17 *(7) individuals with disabilities are a discrete and*
18 *insular minority who have been faced with restrictions*
19 *and limitations, subjected to a history of purposeful*
20 *unequal treatment, and relegated to a position of politi-*
21 *cal powerlessness in our society, based on characteris-*
22 *tics that are beyond the control of such individuals and*
23 *resulting from stereotypic assumptions not truly indic-*
24 *ative of the individual ability of such individuals to*
25 *participate in, and contribute to, society;*

1 (8) *the Nation's proper goals regarding individ-*
2 *uals with disabilities are to assure equality of opportu-*
3 *nity, full participation, independent living, and eco-*
4 *nomic self-sufficiency for such individuals; and*

5 (9) *the continuing existence of unfair and unnec-*
6 *essary discrimination and prejudice denies people with*
7 *disabilities the opportunity to compete on an equal*
8 *basis and to pursue those opportunities for which our*
9 *free society is justifiably famous, and costs the United*
10 *States billions of dollars in unnecessary expenses re-*
11 *sulting from dependency and nonproductivity.*

12 (b) *PURPOSE.—It is the purpose of this Act—*

13 (1) *to provide a clear and comprehensive national*
14 *mandate for the elimination of discrimination against*
15 *individuals with disabilities;*

16 (2) *to provide clear, strong, consistent, enforceable*
17 *standards addressing discrimination against individ-*
18 *uals with disabilities;*

19 (3) *to ensure that the Federal Government plays*
20 *a central role in enforcing the standards established in*
21 *this Act on behalf of individuals with disabilities; and*

22 (4) *to invoke the sweep of congressional authority,*
23 *including its power to enforce the fourteenth amend-*
24 *ment and to regulate commerce, in order to address the*
25 *major areas of discrimination faced day-to-day by*
26 *people with disabilities.*

1 **SEC. 3. DEFINITIONS.**

2 *As used in this Act:*

3 (1) **AUXILIARY AIDS AND SERVICES.**—*The term*
 4 *“auxiliary aids and services” includes—*

5 (A) *qualified interpreters or other effective*
 6 *methods of making aurally delivered materials*
 7 *available to individuals with hearing impair-*
 8 *ments;*

9 (B) *qualified readers, taped texts, or other ef-*
 10 *fective methods of making visually delivered mate-*
 11 *rials available to individuals with visual impair-*
 12 *ments;*

13 (C) *acquisition or modification of equipment*
 14 *or devices; and*

15 (D) *other similar services and actions.*

16 (2) **DISABILITY.**—*The term “disability” means,*
 17 *with respect to an individual—*

18 (A) *a physical or mental impairment that*
 19 *substantially limits one or more of the major life*
 20 *activities of such individual;*

21 (B) *a record of such an impairment; or*

22 (C) *being regarded as having such an im-*
 23 *pairment.*

24 (3) **STATE.**—*The term “State” means each of the*
 25 *several States, the District of Columbia, the Common-*
 26 *wealth of Puerto Rico, Guam, American Samoa, the*

1 *Virgin Islands, the Trust Territory of the Pacific Is-*
2 *lands, and the Commonwealth of the Northern Mari-*
3 *ana Islands.*

4 ***TITLE I—EMPLOYMENT***

5 ***SEC. 101. DEFINITIONS.***

6 *As used in this title:*

7 (1) *COMMISSION.*—*The term “Commission”*
8 *means the Equal Employment Opportunity Commis-*
9 *sion established by section 705 of the Civil Rights Act*
10 *of 1964 (42 U.S.C. 2000e-4).*

11 (2) *COVERED ENTITY.*—*The term “covered*
12 *entity” means an employer, employment agency, labor*
13 *organization, or joint labor-management committee.*

14 (3) *EMPLOYEE.*—*The term “employee” means an*
15 *individual employed by an employer.*

16 (4) *EMPLOYER.*—

17 (A) *The term “employer” means a person*
18 *engaged in an industry affecting commerce who*
19 *has 15 or more employees for each working day*
20 *in each of 20 or more calendar weeks in the cur-*
21 *rent or preceding calendar year, and any agent of*
22 *such person, except that, for two years following*
23 *the effective date of this title, an employer means*
24 *a person engaged in an industry affecting com-*
25 *merce who has 25 or more employees for each*

1 *working day in each of 20 or more calendar*
2 *weeks in the current or preceding year, and any*
3 *agent of such person.*

4 (B) *EXCEPTIONS.—The term “employer”*
5 *does not include—*

6 (i) *the United States, a corporation*
7 *wholly owned by the government of the*
8 *United States, or an Indian tribe; or*

9 (ii) *a bona fide private membership club*
10 *(other than a labor organization) that is*
11 *exempt from taxation under section 501(c) of*
12 *the Internal Revenue Code of 1986.*

13 (5) *ILLEGAL DRUG.—The term “illegal drug”*
14 *means a controlled substance, as defined in schedules I*
15 *through V of section 202 of the Controlled Substances*
16 *Act (21 U.S.C. 812), the possession or distribution of*
17 *which is unlawful under such Act. The term “illegal*
18 *drug” does not mean the use of a controlled substance*
19 *pursuant to a valid prescription or other uses author-*
20 *ized by this Act.*

21 (6) *PERSON, ETC.—The terms “person”, “labor*
22 *organization”, “employment agency”, “commerce”, and*
23 *“industry affecting commerce”, shall have the same*
24 *meaning given such terms in section 701 of the Civil*
25 *Rights Act of 1964 (42 U.S.C. 2000e).*

1 (7) *QUALIFIED INDIVIDUAL WITH A DISABIL-*
 2 *ITY.*—*The term “qualified individual with a disabili-*
 3 *ty” means an individual with a disability who, with*
 4 *or without reasonable accommodation, can perform the*
 5 *essential functions of the employment position that*
 6 *such individual holds or desires.*

7 (8) *REASONABLE ACCOMMODATION.*—*The term*
 8 *“reasonable accommodation” may include—*

9 (A) *making existing facilities used by em-*
 10 *ployees readily accessible to and usable by indi-*
 11 *viduals with disabilities; and*

12 (B) *job restructuring, part-time or modified*
 13 *work schedules, reassignment to a vacant position,*
 14 *acquisition or modification of equipment or de-*
 15 *vices, appropriate adjustment or modifications of*
 16 *examinations, training materials or policies, the*
 17 *provision of qualified readers or interpreters, and*
 18 *other similar accommodations for individuals with*
 19 *disabilities.*

20 (9) *UNDUE HARDSHIP.*—

21 (A) *IN GENERAL.*—*The term “undue hard-*
 22 *ship” means an action requiring significant diffi-*
 23 *culty or expense.*

24 (B) *DETERMINATION.*—*In determining*
 25 *whether an accommodation would impose an*

1 undue hardship on a covered entity, factors to be
2 considered include—

3 (i) the overall size of the business of a
4 covered entity with respect to the number of
5 employees, number and type of facilities, and
6 the size of the budget;

7 (ii) the type of operation maintained by
8 the covered entity, including the composition
9 and structure of the workforce of such entity;
10 and

11 (iii) the nature and cost of the accom-
12 modation needed under this Act.

13 **SEC. 102. DISCRIMINATION.**

14 (a) **GENERAL RULE.**—No covered entity shall dis-
15 criminate against a qualified individual with a disability be-
16 cause of the disability of such individual in regard to job
17 application procedures, the hiring or discharge of employees,
18 employee compensation, advancement, job training, and other
19 terms, conditions, and privileges of employment.

20 (b) **CONSTRUCTION.**—As used in subsection (a), the
21 term “discrimination” includes—

22 (1) limiting, segregating, or classifying a job ap-
23 plicant or employee in a way that adversely affects the
24 opportunities or status of such applicant or employee
25 because of the disability of such applicant or employee;

1 (2) *participating in a contractual or other ar-*
2 *rangement or relationship that has the effect of subject-*
3 *ing a qualified applicant or employee with a disability*
4 *to the discrimination prohibited by this title (such rela-*
5 *tionship includes a relationship with an employment or*
6 *referral agency, labor union, an organization providing*
7 *fringe benefits to an employee of the covered entity, or*
8 *an organization providing training and apprenticeship*
9 *programs);*

10 (3) *utilizing standards, criteria, or methods of*
11 *administration—*

12 (A) *that have the effect of discrimination on*
13 *the basis of disability; or*

14 (B) *that perpetuate the discrimination of*
15 *others who are subject to common administrative*
16 *control;*

17 (4) *excluding or otherwise denying equal jobs or*
18 *benefits to a qualified individual because of the known*
19 *disability of an individual with whom the qualified in-*
20 *dividual is known to have a relationship or association;*

21 (5) *not making reasonable accommodations to the*
22 *known physical or mental limitations of a qualified in-*
23 *dividual who is an applicant or employee, unless such*
24 *covered entity can demonstrate that the accommodation*

1 *would impose an undue hardship on the operation of*
2 *the business of such covered entity;*

3 *(6) denying employment opportunities to a job ap-*
4 *plicant or employee who is a qualified individual with*
5 *a disability, if such denial is based on the need of such*
6 *covered entity to make reasonable accommodation to*
7 *the physical or mental impairments of the employee or*
8 *applicant;*

9 *(7) using employment tests or other selection crite-*
10 *ria that screen out or tend to screen out an individual*
11 *with a disability or a class of individuals with disabili-*
12 *ties unless the test or other selection criteria, as used*
13 *by the covered entity, is shown to be job-related for the*
14 *position in question and is consistent with business ne-*
15 *cessity;*

16 *(8) failing to select and administer tests concern-*
17 *ing employment in the most effective manner to ensure*
18 *that, when such test is administered to a job applicant*
19 *or employee who has a disability that impairs sensory,*
20 *manual, or speaking skills, such test results accurately*
21 *reflect the skills, aptitude, or whatever other factor of*
22 *such applicant or employee that such test purports to*
23 *measure, rather than reflecting the impaired sensory,*
24 *manual, or speaking skills of such employee or appli-*

1 *cant (except where such skills are the factors that the*
2 *test purports to measure).*

3 *(c) MEDICAL EXAMINATIONS AND INQUIRIES.—*

4 *(1) IN GENERAL.—The prohibition against dis-*
5 *crimination as referred to in subsection (a) shall in-*
6 *clude medical examinations and inquiries.*

7 *(2) PREEMPLOYMENT.—*

8 *(A) PROHIBITED EXAMINATION OR IN-*
9 *QUIRY.—Except as provided in paragraph (3), a*
10 *covered entity shall not conduct a medical exami-*
11 *nation or make inquiries of a job applicant or em-*
12 *ployee as to whether such applicant or employee is*
13 *an individual with a disability or as to the nature*
14 *or severity of such disability.*

15 *(B) ACCEPTABLE INQUIRY.—A covered*
16 *entity may make preemployment inquiries into*
17 *the ability of an applicant to perform job-related*
18 *functions.*

19 *(3) EMPLOYMENT ENTRANCE EXAMINATION.—A*
20 *covered entity may require a medical examination after*
21 *an offer of employment has been made to a job appli-*
22 *cant and prior to the commencement of the employment*
23 *duties of such applicant, and may condition an offer of*
24 *employment on the results of such examination, if—*

1 (A) all entering employees are subjected to
2 such an examination regardless of disability;

3 (B) information obtained regarding the medi-
4 cal condition or history of the applicant is collect-
5 ed and maintained on separate forms and in sepa-
6 rate medical files and is treated as a confidential
7 medical record, except that—

8 (i) supervisors and managers may be
9 informed regarding necessary restrictions on
10 the work or duties of the employee and neces-
11 sary accommodations;

12 (ii) first aid and safety personnel may
13 be informed, when appropriate, if the disabil-
14 ity might require emergency treatment; and

15 (iii) government officials investigating
16 compliance with this Act shall be provided
17 relevant information on request; and

18 (C) the results of such physical examination
19 are used only in accordance with this title.

20 (4) EXAMINATION AND INQUIRY.—

21 (A) PROHIBITED EXAMINATIONS AND IN-
22 QUIRIES.—A covered entity shall not conduct or
23 require a medical examination and shall not make
24 inquiries of an employee as to whether such em-
25 ployee is an individual with a disability or as to

1 *the nature or severity of the disability, unless*
 2 *such examination or inquiry is shown to be job-*
 3 *related and consistent with business necessity.*

4 **(B) ACCEPTABLE INQUIRIES.**—*A covered*
 5 *entity may make inquiries into the ability of an*
 6 *employee to perform job-related functions.*

7 **SEC. 103. DEFENSES.**

8 **(a) IN GENERAL.**—*It may be a defense to a charge of*
 9 *discrimination under this Act that an alleged application of*
 10 *qualification standards, tests, or selection criteria that screen*
 11 *out or tend to screen out or otherwise deny a job or benefit to*
 12 *an individual with a disability has been shown to be job-*
 13 *related and consistent with business necessity, and such*
 14 *performance cannot be accomplished by reasonable*
 15 *accommodation.*

16 **(b) QUALIFICATION STANDARDS.**—*The term “qualifi-*
 17 *cation standards” may include a requirement that an indi-*
 18 *vidual with a currently contagious disease or infection shall*
 19 *not pose a direct threat to the health or safety of other indi-*
 20 *viduals in the workplace.*

21 **(c) DRUG ADDICTS AND ALCOHOLICS.**—

22 **(1) IN GENERAL.**—*A covered entity—*

23 **(A)** *may prohibit the use of alcohol or illegal*
 24 *drugs at the workplace by all employees;*

1 (B) may require that employees not be under
2 the influence of alcohol or illegal drugs at the
3 workplace;

4 (C) may require that employees conform
5 their behavior to requirements established pursu-
6 ant to the Drug-Free Workplace Act of 1988 (41
7 U.S.C. 701 et seq.) and that transportation em-
8 ployees meet requirements established by the Sec-
9 retary of Transportation with respect to drugs and
10 alcohol; and

11 (D) may hold a drug user or alcoholic to the
12 same qualification standards for employment or
13 job performance and behavior to which it holds
14 other individuals, even if any unsatisfactory per-
15 formance or behavior is related to the drug use or
16 alcoholism of such individual.

17 (2) CONSTRUCTION.—Nothing in this title shall
18 be construed to encourage, prohibit, or authorize con-
19 ducting drug testing of job applicants or employees or
20 making employment decisions based on such test
21 results.

22 (d) RELIGIOUS ENTITIES.—

23 (1) IN GENERAL.—This title shall not prohibit a
24 religious corporation, association, educational institu-
25 tion, or society from giving preference in employment

1 to individuals of a particular religion to perform work
2 connected with the carrying on by such corporation, as-
3 sociation, educational institution, or society of its
4 activities.

5 (2) *QUALIFICATION STANDARD.*—Under this
6 title, a religious organization may require, as a qualifi-
7 cation standard to employment, that all applicants and
8 employees conform to the religious tenets of such
9 organization.

10 **SEC. 104. POSTING NOTICES.**

11 Every employer, employment agency, labor organiza-
12 tion, or joint labor-management committee covered under this
13 title shall post notices in an accessible format to applicants,
14 employees, and members describing the applicable provisions
15 of this Act, in the manner prescribed by section 711 of the
16 Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

17 **SEC. 105. REGULATIONS.**

18 Not later than 1 year after the date of enactment of this
19 Act, the Commission shall issue regulations in an accessible
20 format to carry out this title in accordance with subchapter
21 II of chapter 5 of title 5, United States Code.

22 **SEC. 106. ENFORCEMENT.**

23 The remedies and procedures set forth in sections 706,
24 707, 709, and 710 of the Civil Rights Act of 1964 (42
25 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be

1 *available, with respect to the Commission or any individual*
 2 *who believes that he or she is being subjected to discrimina-*
 3 *tion on the basis of disability in violation of any provisions of*
 4 *this Act, or regulations promulgated under section 105, con-*
 5 *cerning employment.*

6 **SEC. 107. EFFECTIVE DATE.**

7 *This title shall become effective 24 months after the date*
 8 *of enactment.*

9 **TITLE II—PUBLIC SERVICES**

10 **SEC. 201. DEFINITION.**

11 *As used in this title, the term “qualified individual with*
 12 *a disability” means an individual with a disability who,*
 13 *with or without reasonable modifications to rules, policies,*
 14 *and practices, the removal of architectural, communication,*
 15 *and transportation barriers, or the provision of auxiliary aids*
 16 *and services, meets the essential eligibility requirements for*
 17 *the receipt of services or the participation in programs or ac-*
 18 *tivities provided by a department, agency, special purpose*
 19 *district, or other instrumentality of a State or a local*
 20 *government.*

21 **SEC. 202. DISCRIMINATION.**

22 *No qualified individual with a disability shall, by*
 23 *reason of such disability, be excluded from the participation*
 24 *in, be denied the benefits of, or be subjected to discrimination*

1 *by a department, agency, special purpose district, or other*
 2 *instrumentality of a State or a local government.*

3 **SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION**
 4 **PROVIDED BY PUBLIC ENTITIES CONSIDERED**
 5 **DISCRIMINATORY.**

6 (a) *DEFINITION.*—*As used in this title, the term*
 7 *“public transportation” means transportation by bus or rail,*
 8 *or by any other conveyance (other than air travel) that pro-*
 9 *vides the general public with general or special service (in-*
 10 *cluding charter service) on a regular and continuing basis.*

11 (b) *VEHICLES.*—

12 (1) *NEW BUSES, RAIL VEHICLES, AND OTHER*
 13 *FIXED ROUTE VEHICLES.*—*It shall be considered dis-*
 14 *crimination for purposes of this Act and section 504 of*
 15 *the Rehabilitation Act of 1973 (29 U.S.C. 794) for a*
 16 *public entity to purchase or lease a new fixed route bus*
 17 *of any size, a new intercity rail vehicle, a new com-*
 18 *muter rail vehicle, a new rapid rail vehicle, a new*
 19 *light rail vehicle to be used for public transportation,*
 20 *or any other new fixed route vehicle to be used for*
 21 *public transportation and for which a solicitation is*
 22 *made later than 30 days after the date of enactment of*
 23 *this Act, if such bus, rail, or other vehicle is not read-*
 24 *ily accessible to and usable by individuals with dis-*
 25 *abilities, including individuals who use wheelchairs.*

1 (2) *USED VEHICLES.*—If a public entity pur-
2 chases or leases a used vehicle to be used for public
3 transportation after the date of enactment of this Act,
4 such individual or entity shall make demonstrated good
5 faith efforts to purchase or lease such a used vehicle
6 that is readily accessible to and usable by individuals
7 with disabilities, including individuals who use wheel-
8 chairs.

9 (3) *REMANUFACTURED VEHICLES.*—If a public
10 entity remanufactures a vehicle, or purchases or leases
11 a remanufactured vehicle to be used for public trans-
12 portation, so as to extend its usable life for 5 years or
13 more, the vehicle shall, to the maximum extent feasible,
14 be readily accessible to and usable by individuals with
15 disabilities, including individuals who use wheelchairs.

16 (c) *PARATRANSIT AS A SUPPLEMENT TO FIXED*
17 *ROUTE PUBLIC TRANSPORTATION SYSTEM.*—

18 (1) *IN GENERAL.*—If a public entity operates a
19 fixed route public transportation system to provide
20 public transportation, it shall be considered discrimina-
21 tion, for purposes of this Act and section 504 of the
22 Rehabilitation Act of 1973 (29 U.S.C. 794), for a
23 public transit entity that is responsible for providing
24 public transportation to fail to provide paratransit or
25 other special transportation services sufficient to pro-

1 *vide a comparable level of services as is provided to in-*
2 *dividuals using fixed route public transportation to in-*
3 *dividuals with disabilities, including individuals who*
4 *use wheelchairs, who cannot otherwise use fixed route*
5 *public transportation and to other individuals associat-*
6 *ed with such individuals with disabilities in accord-*
7 *ance with service criteria established under regulations*
8 *promulgated by the Secretary of Transportation unless*
9 *the public transit entity can demonstrate that the provi-*
10 *sion of paratransit or other special transportation serv-*
11 *ices would impose an undue financial burden on the*
12 *public transit entity.*

13 (2) *UNDUE FINANCIAL BURDEN.—If the provi-*
14 *sion of comparable paratransit or other special trans-*
15 *portation services would impose an undue financial*
16 *burden on the public transit entity, such entity must*
17 *provide paratransit and other special transportation*
18 *services to the extent that providing such services*
19 *would not impose an undue financial burden on such*
20 *entity.*

21 (3) *REGULATIONS.—*

22 (A) *FORMULA.—Regulations promulgated*
23 *by the Secretary of Transportation to determine*
24 *what constitutes an undue financial burden, for*
25 *purposes of this subsection, may include a flexible*

1 *numerical formula that incorporates appropriate*
 2 *local characteristics such as population.*

3 (B) *ADDITIONAL PARATRANSIT SERV-*
 4 *ICES.—Notwithstanding paragraphs (1) and (2),*
 5 *the Secretary may require, at the discretion of the*
 6 *Secretary, a public transit authority to provide*
 7 *paratransit services beyond the amount deter-*
 8 *mined by such formula.*

9 (d) *COMMUNITY OPERATING DEMAND RESPONSIVE*
 10 *SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity*
 11 *operates a demand responsive system that is used to provide*
 12 *public transportation for the general public, it shall be con-*
 13 *sidered discrimination, for purposes of this Act and section*
 14 *504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for*
 15 *such individual or entity to purchase or lease a new vehicle,*
 16 *for which a solicitation is made later than 30 days after the*
 17 *date of enactment of this Act, that is not readily accessible to*
 18 *and usable by individuals with disabilities, including indi-*
 19 *viduals who use wheelchairs, unless the entity can demon-*
 20 *strate that such system, when viewed in its entirety, provides*
 21 *a level of service to individuals with disabilities equivalent to*
 22 *that provided to the general public.*

23 (e) *TEMPORARY RELIEF WHERE LIFTS ARE UN-*
 24 *AVAILABLE.—With respect to the purchase of new buses, a*
 25 *public entity may apply for, and the Secretary of Transpor-*

1 *tation may temporarily relieve such public entity from the*
 2 *obligation to purchase new buses of any size that are readily*
 3 *accessible to and usable by individuals with disabilities if*
 4 *such public entity demonstrates—*

5 *(1) that the initial solicitation for new buses made*
 6 *by the public entity specified that all new buses were to*
 7 *be lift-equipped and were to be otherwise accessible to*
 8 *and usable by individuals with disabilities;*

9 *(2) the unavailability from any qualified manu-*
 10 *facturer of hydraulic, electro-mechanical, or other lifts*
 11 *for such new buses;*

12 *(3) that the public entity seeking temporary relief*
 13 *has made good faith efforts to locate a qualified manu-*
 14 *facturer to supply the lifts to the manufacturer of such*
 15 *buses in sufficient time to comply with such solicita-*
 16 *tion; and*

17 *(4) that any further delay in purchasing new*
 18 *buses necessary to obtain such lifts would significantly*
 19 *impair transportation services in the community served*
 20 *by the public entity.*

21 *(f) CONSTRUCTION.—*

22 *(1) IN GENERAL.—Any relief granted under sub-*
 23 *section (e) shall be limited in duration by a specified*
 24 *date and the appropriate committees of the Congress*
 25 *shall be notified of any such relief granted.*

1 (2) *FRAUDULENT APPLICATION.*—If, at any
 2 time, the Secretary of Transportation has reasonable
 3 cause to believe that such relief was fraudulently ap-
 4 plied for, the Secretary of Transportation shall—

5 (A) cancel such relief, if such relief is still in
 6 effect; and

7 (B) take other steps that the Secretary of
 8 Transportation considers appropriate.

9 (g) *NEW FACILITIES.*—For purposes of this Act and
 10 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
 11 794), it shall be considered discrimination for a public entity
 12 to build a new facility that will be used to provide public
 13 transportation services, including bus service, intercity rail
 14 service, rapid rail service, commuter rail service, light rail
 15 service, and other service used for public transportation that
 16 is not readily accessible to and usable by individuals with
 17 disabilities, including individuals who use wheelchairs.

18 (h) *ALTERATIONS OF EXISTING FACILITIES.*—With
 19 respect to a facility or any part thereof that is used for public
 20 transportation and that is altered by, on behalf of, or for the
 21 use of a public entity in a manner that affects or could affect
 22 the usability of the facility or part thereof, it shall be consid-
 23 ered discrimination, for purposes of this title and section 504
 24 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such
 25 individual or entity to fail to make the alterations in such a

1 manner that, to the maximum extent feasible, the altered por-
 2 tions of the facility are readily accessible to and usable by
 3 individuals with disabilities, including individuals who use
 4 wheelchairs. If such public entity is undertaking major struc-
 5 tural alterations that affect or could affect the usability of the
 6 facility (as defined under criteria established by the Secre-
 7 tary of Transportation), such public entity shall also make
 8 the alterations in such a manner that, to the maximum extent
 9 feasible, the path of travel to the altered area, and the bath-
 10 rooms, telephones, and drinking fountains serving such area,
 11 are readily accessible to and usable by individuals with dis-
 12 abilities, including individuals who use wheelchairs.

13 (i) *EXISTING FACILITIES, INTERCITY RAIL, RAPID*
 14 *RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND*
 15 *KEY STATIONS.*—

16 (1) *EXISTING FACILITIES.*—*Except as provided*
 17 *in paragraph (3), with respect to existing facilities*
 18 *used for public transportation, it shall be considered*
 19 *discrimination, for purposes of this Act and section*
 20 *504 of the Rehabilitation Act of 1973 (29 U.S.C.*
 21 *794), for a public entity to fail to operate such public*
 22 *transportation program or activity conducted in such*
 23 *facilities so that, when viewed in the entirety, it is*
 24 *readily accessible to and usable by individuals with*
 25 *disabilities, including individuals who use wheelchairs.*

1 (2) *INTERCITY, RAPID, LIGHT, AND COMMUTER*
 2 *RAIL SYSTEMS.*—*With respect to vehicles operated by*
 3 *intercity, light, rapid, and commuter rail systems, for*
 4 *purposes of this title and section 504 of the Rehabilita-*
 5 *tion Act of 1973 (29 U.S.C. 794), it shall be consid-*
 6 *ered discrimination for a public entity to fail to have*
 7 *at least one car per train that is accessible to individ-*
 8 *uals with disabilities, including individuals who use*
 9 *wheelchairs, as soon as practicable but in any event in*
 10 *no less than 5 years.*

11 (3) *KEY STATIONS.*—

12 (A) *IN GENERAL.*—*For purposes of this title*
 13 *and section 504 of the Rehabilitation Act of 1973*
 14 *(29 U.S.C. 794), it shall be considered discrimi-*
 15 *nation for a public entity to fail to make stations*
 16 *in intercity rail systems and key stations in rapid*
 17 *rail, commuter rail, and light rail systems readily*
 18 *accessible to and usable by individuals with dis-*
 19 *abilities, including individuals who use wheel-*
 20 *chairs.*

21 (B) *RAPID RAIL, COMMUTER RAIL, AND*
 22 *LIGHT RAIL SYSTEMS.*—*Key stations in rapid*
 23 *rail, commuter rail, and light rail systems shall*
 24 *be made readily accessible to and usable by indi-*
 25 *viduals with disabilities, including individuals*

1 *who use wheelchairs, as soon as practicable but in*
 2 *no event later than 3 years after the date of enact-*
 3 *ment of this Act, except that the time limit may*
 4 *be extended by the Secretary of Transportation up*
 5 *to 20 years for extraordinarily expensive structur-*
 6 *al changes to, or replacement of, existing facilities*
 7 *necessary to achieve accessibility.*

8 *(C) INTERCITY RAIL SYSTEMS.—All sta-*
 9 *tions in intercity rail systems shall be made read-*
 10 *ily accessible to and usable by individuals with*
 11 *disabilities, including individuals who use wheel-*
 12 *chairs, as soon as practicable, but in no event*
 13 *later than 20 years after the date of enactment of*
 14 *this Act.*

15 *(D) PLANS AND MILESTONES.—The Secre-*
 16 *tary of Transportation shall require the appropri-*
 17 *ate public entity to develop a plan for compliance*
 18 *with this paragraph that reflects consultation with*
 19 *individuals with disabilities affected by such plan*
 20 *and that establishes milestones for achievement of*
 21 *the requirements of this paragraph.*

22 **SEC. 204. REGULATIONS.**

23 *(a) ATTORNEY GENERAL.—Not later than 1 year after*
 24 *the date of enactment of this Act, the Attorney General shall*
 25 *promulgate regulations in an accessible format that imple-*

1 *ment this title (other than section 203), and such regulations*
 2 *shall be consistent with this title and with the coordination*
 3 *regulations under part 41 of title 28, Code of Federal Regu-*
 4 *lations (as promulgated by the Department of Health, Edu-*
 5 *cation, and Welfare on January 13, 1978), applicable to re-*
 6 *cipients of Federal financial assistance under section 504 of*
 7 *the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with*
 8 *respect to "program accessibility, existing facilities", and*
 9 *"communications", such regulations shall be consistent with*
 10 *regulations and analysis as in part 39 of title 28 of the Code*
 11 *of Federal Regulations, applicable to federally conducted ac-*
 12 *tivities under section 504 of the Rehabilitation Act of 1973*
 13 *(29 U.S.C. 794).*

14 *(b) SECRETARY OF TRANSPORTATION.—*

15 *(1) IN GENERAL.—Not later than 1 year after*
 16 *the date of enactment of this Act, the Secretary of*
 17 *Transportation shall promulgate regulations in an ac-*
 18 *cessible format that include standards applicable to fa-*
 19 *cilities and vehicles covered under section 203 of this*
 20 *title.*

21 *(2) CONFORMANCE OF STANDARDS.—Such*
 22 *standards shall be consistent with the minimum guide-*
 23 *lines and requirements issued by the Architectural and*
 24 *Transportation Barriers Compliance Board in accord-*
 25 *ance with section 504.*

1 **SEC. 205. ENFORCEMENT.**

2 *The remedies, procedures, and rights set forth in section*
 3 *505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a)*
 4 *shall be available with respect to any individual who believes*
 5 *that he or she is being subjected to discrimination on the*
 6 *basis of disability in violation of this Act, or regulations pro-*
 7 *mulgated under section 204, concerning public services.*

8 **SEC. 206. EFFECTIVE DATE.**

9 *(a) IN GENERAL.—Except as provided in subsection*
 10 *(b), this title shall become effective 18 months after the date*
 11 *of enactment of this Act.*

12 *(b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as*
 13 *regarding new fixed route vehicles, shall become effective on*
 14 *the date of enactment of this Act.*

15 **TITLE III—PUBLIC ACCOMMODA-**
 16 **TIONS AND SERVICES OPERAT-**
 17 **ED BY PRIVATE ENTITIES**

18 **SEC. 301. DEFINITIONS.**

19 *As used in this title:*

20 *(1) COMMERCE.—The term “commerce” means*
 21 *travel, trade, traffic, commerce, transportation, or com-*
 22 *munication—*

23 *(A) among the several States;*

24 *(B) between any foreign country or any ter-*
 25 *ritory or possession and any State; or*

1 (C) between points in the same State but
2 through another State or foreign country.

3 (2) *POTENTIAL PLACES OF EMPLOYMENT.*—The
4 term “potential places of employment” means facili-
5 ties—

6 (A) that are intended for nonresidential use;
7 and

8 (B) whose operations will affect commerce.

9 Such term shall not include facilities that are covered
10 or expressly exempted from coverage under the Fair
11 Housing Act of 1968 (42 U.S.C. 3601 et seq.).

12 (3) *PUBLIC ACCOMMODATION.*—The following
13 privately operated entities are considered public accom-
14 modations for purposes of this title, if the operations of
15 such entities affect commerce—

16 (A) an inn, hotel, motel, or other similar
17 place of lodging, except for an establishment locat-
18 ed within a building that contains not more than
19 five rooms for rent or hire and that is actually oc-
20 cupied by the proprietor of such establishment as
21 the residence of such proprietor;

22 (B) a restaurant, bar, or other establishment
23 serving food or drink;

1 (C) a motion picture house, theater, concert
2 hall, stadium, or other place of exhibition or
3 entertainment;

4 (D) an auditorium, convention center, or lec-
5 ture hall;

6 (E) a bakery, grocery store, clothing store,
7 hardware store, shopping center, or other similar
8 retail sales establishment;

9 (F) a laundromat, dry-cleaners, bank, barber
10 shop, beauty shop, travel service, shoe repair serv-
11 ice, funeral parlor, gas station, office of an ac-
12 countant or lawyer, pharmacy, insurance office,
13 professional office of a health care provider, hospi-
14 tal, or other similar service establishment;

15 (G) a terminal used for public transporta-
16 tion;

17 (H) a museum, library, gallery, and other
18 similar place of public display or collection;

19 (I) a park or zoo;

20 (J) a nursery, elementary, secondary, under-
21 graduate, or postgraduate private school;

22 (K) a day care center, senior citizen center,
23 homeless shelter, food bank, adoption program, or
24 other similar social service center; and

1 (L) a gymnasium, health spa, bowling alley,
2 golf course, or other similar place of exercise or
3 recreation.

4 (4) PUBLIC TRANSPORTATION.—The term
5 “public transportation” means transportation by bus or
6 rail, or by any other conveyance (other than by air
7 travel) that provides the general public with general or
8 special service (including charter service) on a regular
9 and continuing basis.

10 (5) READILY ACHIEVABLE.—

11 (A) IN GENERAL.—The term “readily
12 achievable” means easily accomplishable and able
13 to be carried out without much difficulty or
14 expense.

15 (B) DETERMINATION.—In determining
16 whether an action is readily achievable, factors to
17 be considered include—

18 (i) the overall size of the covered entity
19 with respect to number of employees, number
20 and type of facilities, and the size of budget;

21 (ii) the type of operation of the covered
22 entity, including the composition and struc-
23 ture of the entity; and

24 (iii) the nature and cost of the action
25 needed.

1 **SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOM-**
 2 **MODATIONS.**

3 (a) *GENERAL RULE.*—No individual shall be discrimi-
 4 nated against on the basis of disability in the full and equal
 5 enjoyment of the goods, services, facilities, privileges, advan-
 6 tages, and accommodations of any place of public accommo-
 7 dation.

8 (b) *CONSTRUCTION.*—

9 (1) *GENERAL PROHIBITION.*—

10 (A) *ACTIVITIES.*—

11 (i) *DENIAL OF PARTICIPATION.*—It
 12 shall be discriminatory to subject an individ-
 13 ual or class of individuals on the basis of a
 14 disability or disabilities of such individual or
 15 class, directly, or through contractual, licens-
 16 ing, or other arrangements, to a denial of the
 17 opportunity of the individual or class to par-
 18 ticipate in or benefit from the goods, services,
 19 facilities, privileges, advantages, and accom-
 20 modations of an entity.

21 (ii) *PARTICIPATION IN UNEQUAL BEN-*
 22 *EFIT.*—It shall be discriminatory to afford
 23 an individual or class of individuals, on the
 24 basis of a disability or disabilities of such
 25 individual or class, directly, or through con-
 26 tractual, licensing, or other arrangements

1 *with the opportunity to participate in or ben-*
2 *efit from a good, service, facility, privilege,*
3 *advantage, and accommodation that is not*
4 *equal to that afforded to other individuals.*

5 (iii) *SEPARATE BENEFIT.*—*It shall be*
6 *discriminatory to provide an individual or*
7 *class of individuals, on the basis of a disabil-*
8 *ity or disabilities of such individual or class,*
9 *directly, or through contractual, licensing, or*
10 *other arrangements with a good, service, fa-*
11 *cility, privilege, advantage, or accommoda-*
12 *tion that is different or separate from that*
13 *provided to other individuals, unless such*
14 *action is necessary to provide the individual*
15 *or class of individuals with a good, service,*
16 *facility, privilege, advantage, or accommoda-*
17 *tion, or other opportunity that is as effective*
18 *as that provided to others.*

19 (B) *INTEGRATED SETTINGS.*—*Goods, facili-*
20 *ties, privileges, advantages, accommodations, and*
21 *services shall be afforded to an individual with a*
22 *disability in the most integrated setting appropri-*
23 *ate to the needs of the individual.*

24 (C) *OPPORTUNITY TO PARTICIPATE.*—*Not-*
25 *withstanding the existence of separate or different*

1 *programs or activities provided in accordance with*
2 *this section, an individual with a disability shall*
3 *not be denied the opportunity to participate in*
4 *such programs or activities that are not separate*
5 *or different.*

6 (D) *ADMINISTRATIVE METHODS.*—*An indi-*
7 *vidual or entity shall not, directly or through con-*
8 *tractual or other arrangements, utilize standards*
9 *or criteria or methods of administration—*

10 (i) *that have the effect of discriminating*
11 *on the basis of disability; or*

12 (ii) *that perpetuate the discrimination of*
13 *others who are subject to common adminis-*
14 *trative control.*

15 (E) *ASSOCIATION.*—*It shall be discrimina-*
16 *tory to exclude or otherwise deny equal goods,*
17 *services, facilities, privileges, advantages, and ac-*
18 *commodations, or other opportunities to an indi-*
19 *vidual or entity because of the known disability of*
20 *an individual with whom the individual or entity*
21 *is known to have a relationship or association.*

22 (2) *SPECIFIC PROHIBITIONS.*—

23 (A) *DISCRIMINATION.*—*As used in subsec-*
24 *tion (a), the term “discrimination” shall in-*
25 *clude—*

1 (i) the imposition or application of eligi-
 2 bility criteria that screen out or tend to
 3 screen out an individual with a disability or
 4 any class of individuals with disabilities
 5 from fully and equally enjoying any goods,
 6 services, facilities, privileges, advantages,
 7 and accommodations, unless such criteria
 8 can be shown to be necessary for the provi-
 9 sion of the goods, services, facilities, privi-
 10 leges, advantages, or accommodations being
 11 offered;

12 (ii) a failure to make reasonable modifi-
 13 cations in policies, practices, procedures,
 14 when such modifications are necessary to
 15 afford such goods, services, facilities, privi-
 16 leges, advantages, and accommodations to in-
 17 dividuals with disabilities, unless the entity
 18 can demonstrate that making such modifica-
 19 tions would fundamentally alter the nature
 20 of such goods, services, facilities, privileges,
 21 advantages, and accommodations;

22 (iii) a failure to take such steps as may
 23 be necessary to ensure that no individual
 24 with a disability is excluded, denied services,
 25 segregated or otherwise treated differently

1 *than other individual because of the absence*
2 *of auxiliary aids and services, unless the*
3 *entity can demonstrate that taking such steps*
4 *would fundamentally alter the nature of the*
5 *good, service, facility, privilege, advantage,*
6 *or accommodation being offered or would*
7 *result in undue burden;*

8 *(iv) a failure to remove architectural*
9 *barriers, and communication barriers that*
10 *are structural in nature, in existing facili-*
11 *ties, and transportation barriers in existing*
12 *vehicles used by an establishment for trans-*
13 *porting individuals (not including barriers*
14 *that can only be removed through the retrofit-*
15 *ting of vehicles by the installation of a hy-*
16 *draulic or other lift), where such removal is*
17 *readily achievable;*

18 *(v) where an entity can demonstrate*
19 *that the removal of a barrier under clause*
20 *(iv) is not readily achievable, a failure to*
21 *make such goods, services, facilities, privi-*
22 *leges, advantages, and accommodations avail-*
23 *able through alternative methods if such*
24 *methods are readily achievable;*

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General), the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless

1 *the building is a shopping center, a shopping*
 2 *mall, or the professional office of a health*
 3 *care provider or unless the Attorney General*
 4 *determines that a particular category of such*
 5 *facilities requires the installation of elevators*
 6 *based on the usage of such facilities.*

7 *(B) FIXED ROUTE SYSTEM.—*

8 *(i) ACCESSIBILITY.—It shall be con-*
 9 *sidered discrimination for an entity that uses*
 10 *a vehicle for a fixed route system to trans-*
 11 *port individuals not covered under section*
 12 *203 or 304, to purchase or lease a bus or a*
 13 *vehicle that is capable of carrying in excess*
 14 *of 16 passengers, for which solicitations are*
 15 *made later than 30 days after the effective*
 16 *date of this Act, that is not readily accessible*
 17 *to and usable by individuals with disabilities*
 18 *(including individuals who use wheelchairs),*
 19 *except that over-the-road buses shall be sub-*
 20 *ject to section 304(b)(4) and section 305.*

21 *(ii) EQUIVALENT SERVICE.—If such*
 22 *entity purchases or leases a vehicle carrying*
 23 *16 or less passengers after the effective date*
 24 *of this title that is not readily accessible to or*
 25 *usable by individuals with disabilities, it*

1 *shall be discriminatory for such entity to fail*
 2 *to operate a system that, when viewed in its*
 3 *entirety, ensures a level of service to individ-*
 4 *uals with disabilities, including individuals*
 5 *who use wheelchairs, equivalent to the level*
 6 *of service provided to the general public.*

7 (C) *DEMAND RESPONSIVE SYSTEM.*—As
 8 *used in subsection (a), the term “discrimination”*
 9 *shall include, in the case of a covered entity that*
 10 *uses vehicles in a demand responsive system to*
 11 *transport individuals not covered under section*
 12 *203 or 304, an incident in which—*

13 (i) *such entity purchases or leases a ve-*
 14 *hicle carrying 16 or less passengers after the*
 15 *effective date of this title, a failure to operate*
 16 *a system that, when viewed in its entirety,*
 17 *ensures a level of service to individuals with*
 18 *disabilities, including individuals who use*
 19 *wheelchairs, equivalent to the level of service*
 20 *provided to the general public; and*

21 (ii) *such entity purchases or leases a*
 22 *bus or a vehicle that can carry in excess of*
 23 *16 passengers for which solicitations are*
 24 *made later than 30 days after the effective*
 25 *date of this Act, that is not readily accessible*

1 to and usable by individuals with disabilities
 2 (including individuals who use wheelchairs)
 3 unless such entity can demonstrate that such
 4 system, when viewed in its entirety, already
 5 provides a level of service to individuals with
 6 disabilities equivalent to that provided to the
 7 general public, except that over-the-road
 8 buses shall be subject to section 304(b)(4)
 9 and section 305.

10 **SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS**
 11 **AND POTENTIAL PLACES OF EMPLOYMENT.**

12 (a) *APPLICATION OF TERM.*—*Except as provided in*
 13 *subsection (b), as applied to a—*

14 (1) *public accommodation; and*

15 (2) *potential place of employment;*

16 *the term “discrimination” as used in section 302(a) shall*
 17 *mean a failure to design and construct facilities for first oc-*
 18 *cupancy later than 30 months after the date of enactment of*
 19 *this Act that are readily accessible to and usable by individ-*
 20 *uals with disabilities, except where an entity can demonstrate*
 21 *that it is structurally impracticable to meet the requirements*
 22 *of such subsection in accordance with standards set forth or*
 23 *incorporated by reference in regulations issued under this*
 24 *title.*

1 (b) *ELEVATOR*.—Subsection (a) shall not be construed
 2 to require the installation of an elevator for facilities that are
 3 less than three stories or have less than 3,000 square feet per
 4 story unless the building is a shopping center, a shopping
 5 mall, or the professional office of a health care provider or
 6 unless the Attorney General determines that a particular cat-
 7 egory of such facilities requires the installation of elevators
 8 based on the usage of such facilities.

9 **SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANS-**
 10 **PORTATION SERVICES PROVIDED BY PRIVATE**
 11 **ENTITIES.**

12 (a) *GENERAL RULE*.—No individual shall be discrimi-
 13 nated against on the basis of disability in the full and equal
 14 enjoyment of public transportation services provided by a pri-
 15 vately operated entity that is primarily engaged in the busi-
 16 ness of transporting people, but is not in the principal busi-
 17 ness of providing air transportation, and whose operations
 18 affect commerce.

19 (b) *CONSTRUCTION*.—As used in subsection (a), the
 20 term “discrimination against” includes—

21 (1) the imposition or application by an entity of
 22 eligibility criteria that screen out or tend to screen out
 23 an individual with a disability or any class of individ-
 24 uals with disabilities from fully enjoying the public
 25 transportation services provided by the entity;

1 (2) *the failure of an entity to—*

2 (A) *make reasonable modifications consistent*
3 *with those required under section 302(b)(2)(A)(ii);*

4 (B) *provide auxiliary aids and services con-*
5 *sistent with the requirements of section*
6 *302(b)(2)(A)(iii); and*

7 (C) *remove barriers consistent with the re-*
8 *quirements of section 302(b)(2)(A) (iv), (v), and*
9 *(vi);*

10 (3) *the purchase or lease of a new vehicle (other*
11 *than an automobile or an over-the-road bus) that is to*
12 *be used to provide public transportation services, and*
13 *for which a solicitation is made later than 30 days*
14 *after the date of enactment of this Act, that is not read-*
15 *ily accessible to and usable by individuals with dis-*
16 *abilities, including individuals who use wheelchairs*
17 *(except in the case of a vehicle used in a demand re-*
18 *sponse system, in which case the new vehicle need not*
19 *be readily accessible to and usable by individuals with*
20 *disabilities if the entity can demonstrate that such*
21 *system, when viewed in its entirety, provides a level of*
22 *service to individuals with disabilities equivalent to the*
23 *level of service provided to the general public); and*

24 (4) *the purchase or lease of a new over-the-road*
25 *bus that is used to provide public transportation serv-*

1 ices and for which a solicitation is made later than 6
2 years after the date of enactment of this Act for small
3 providers (as defined by the Secretary of Transporta-
4 tion) and 5 years for other providers, that is not read-
5 ily accessible to and usable by individuals with dis-
6 abilities, including individuals who use wheelchairs.

7 **SEC. 305. STUDY.**

8 (a) **PURPOSE.**—The Architectural and Transportation
9 Barriers Compliance Board established under section 502 of
10 the Rehabilitation Act of 1973 (29 U.S.C. 792) shall under-
11 take a study to determine—

12 (1) the access needs of individuals with disabil-
13 ities to over-the-road buses; and

14 (2) the most cost effective methods for making
15 over-the-road buses readily accessible to and usable by
16 individuals with disabilities, particularly individuals
17 who use wheelchairs.

18 (b) **CONTENT.**—The study shall analyze issues,
19 including—

20 (1) the anticipated demand by individuals with
21 disabilities for accessible over-the-road buses;

22 (2) the degree to which over-the road buses are
23 readily accessible to and usable by individuals with
24 disabilities;

1 (3) *the cost of providing accessibility to over-the-*
 2 *road buses to individuals with disabilities, including*
 3 *recent technological and cost saving developments in*
 4 *equipment and devices providing such accessibility;*

5 (4) *possible design changes in over-the-road buses*
 6 *that could enhance such accessibility; and*

7 (5) *the impact of accessibility requirements on the*
 8 *continuation of inter-city bus service by over-the-road*
 9 *buses, with particular consideration of impact on rural*
 10 *service.*

11 (c) *ADVISORY COMMITTEE.*—*In conducting the study*
 12 *required by subsection (a), the Architectural and Transporta-*
 13 *tion Barriers Compliance Board shall establish an advisory*
 14 *committee, of which—*

15 (1) *50 percent of the members shall be selected*
 16 *from among private operators using over-the-road*
 17 *buses, bus manufacturers, and lift manufacturers; and*

18 (2) *50 percent of the members shall be individuals*
 19 *with disabilities, particularly individuals who use*
 20 *wheelchairs, who are potential riders of such buses.*

21 (d) *DEADLINE.*—*The study required by subsection (a),*
 22 *along with recommendations by the Board, shall be submitted*
 23 *to the President and the Congress within 36 months from the*
 24 *date of enactment of this Act.*

1 **SEC. 306. REGULATIONS.**

2 (a) *ACCESSIBILITY STANDARDS.*—Not later than 1
3 year after the date of enactment of this Act, the Secretary of
4 Transportation shall issue regulations in an accessible
5 format that shall include standards applicable to facilities
6 and vehicles covered under section 302(b)(2) (B) and (C)
7 and section 304.

8 (b) *OTHER PROVISIONS.*—Not later than 1 year after
9 the date of enactment of this Act, the Attorney General shall
10 issue regulations in an accessible format to carry out the re-
11 maining provisions of this title not referred to in subsection
12 (a) that include standards applicable to facilities and vehicles
13 covered under section 302.

14 (c) *STANDARDS.*—Standards included in regulations
15 issued under subsections (a) and (b) shall be consistent with
16 the minimum guidelines and requirements issued by the Ar-
17 chitectural and Transportation Barriers Compliance Board
18 in accordance with section 504.

19 **SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS**
20 **ORGANIZATIONS.**

21 The provisions of this title shall not apply to private
22 clubs or establishments exempted from coverage under title II
23 of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) or to
24 religious organizations or entities controlled by religious or-
25 ganizations, including places of worship.

1 **SEC. 308. ENFORCEMENT.**

2 (a) *IN GENERAL.*—

3 (1) *AVAILABILITY OF REMEDIES AND PROCE-*
 4 *DURES.*—*The remedies and procedures set forth in sec-*
 5 *tion 204 of the Civil Rights Act of 1964 (42 U.S.C.*
 6 *sec. 2000a-3(a)) shall be available to any individual*
 7 *who is being or is about to be subjected to discrimina-*
 8 *tion on the basis of disability in violation of this title.*

9 (2) *INJUNCTIVE RELIEF.*—*In the case of viola-*
 10 *tions of section 302(b)(2)(A)(iv) and (vi) and section*
 11 *303(a), injunctive relief shall include an order to alter*
 12 *facilities to make such facilities readily accessible to*
 13 *and usable by individuals with disabilities to the*
 14 *extent required by this title. Where appropriate, in-*
 15 *junctive relief shall also include requiring the provision*
 16 *of an auxiliary aid or service, modification of a policy,*
 17 *or provision of alternative methods, to the extent re-*
 18 *quired by this title.*

19 (b) *ENFORCEMENT BY THE ATTORNEY GENERAL.*—

20 (1) *DENIAL OF RIGHTS.*—

21 (A) *DUTY TO INVESTIGATE.*—*The Attorney*
 22 *General shall investigate alleged violations of this*
 23 *title, which shall include undertaking periodic re-*
 24 *views of compliance of covered entities under this*
 25 *title.*

1 (B) *POTENTIAL VIOLATION.*—*If the Attor-*
2 *ney General has reasonable cause to believe that*
3 *any person or group of persons is engaged in a*
4 *pattern or practice of resistance to the full enjoy-*
5 *ment of any of the rights granted by this title or*
6 *that any person or group of persons has been*
7 *denied any of the rights granted by such title, and*
8 *such denial raises an issue of general public im-*
9 *portance, the Attorney General may commence a*
10 *civil action in any appropriate United States dis-*
11 *trict court.*

12 (2) *AUTHORITY OF COURT.*—*In a civil action*
13 *under paragraph (1), the court—*

14 (A) *may grant any equitable relief that such*
15 *court considers to be appropriate, including grant-*
16 *ing temporary, preliminary, or permanent relief,*
17 *providing an auxiliary aid or service, modifica-*
18 *tion of policy or alternative method, or making fa-*
19 *cilities readily accessible to and usable by indi-*
20 *viduals with disabilities, to the extent required by*
21 *this title;*

22 (B) *may award such other relief as the court*
23 *considers to be appropriate, including monetary*
24 *damages to persons aggrieved when requested by*
25 *the Attorney General; and*

1 (C) may, to vindicate the public interest,
 2 assess a civil penalty against the entity in an
 3 amount—

4 (i) not exceeding \$50,000 for a first
 5 violation; and

6 (ii) not exceeding \$100,000 for any
 7 subsequent violation.

8 **SEC. 309. EFFECTIVE DATE.**

9 *This title shall become effective 18 months after the date*
 10 *of enactment of this Act.*

11 **TITLE IV—TELECOMMUNICATIONS**
 12 **RELAY SERVICES**

13 **SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IM-**
 14 **PAIRED AND SPEECH-IMPAIRED INDIVIDUALS.**

15 (a) *TELECOMMUNICATIONS.*—*Title II of the Commu-*
 16 *nications Act of 1934 (47 U.S.C. 201 et seq.) is amended by*
 17 *adding at the end thereof the following new section:*

18 “**SEC. 225. TELECOMMUNICATIONS SERV-**
 19 **ICES FOR HEARING-IMPAIRED AND SPEECH-**
 20 **IMPAIRED INDIVIDUALS.**

21 “(a) *DEFINITIONS.*—*As used in this section—*

22 “(1) *COMMON CARRIER OR CARRIER.*—*The term*
 23 ‘common carrier’ or ‘carrier’ includes any common car-
 24 rier engaged in interstate communication by wire or
 25 radio as defined in section 3(h), any common carrier

1 engaged in intrastate communication by wire or radio,
 2 and any common carrier engaged in both interstate
 3 and intrastate communication, notwithstanding sections
 4 2(b) and 221(b).

5 “(2) TDD.—The term ‘TDD’ means a Telecom-
 6 munications Device for the Deaf, which is a machine
 7 that employs graphic communication in the transmis-
 8 sion of coded signals through a wire or radio communi-
 9 cation system.

10 “(3) TELECOMMUNICATIONS RELAY SERV-
 11 ICES.—The term ‘telecommunications relay services’
 12 means telephone transmission services that provide the
 13 ability for an individual who has a hearing impair-
 14 ment or speech impairment to engage in communica-
 15 tion by wire or radio with a hearing individual in a
 16 manner that is functionally equivalent to the ability of
 17 an individual who does not have a hearing impairment
 18 or speech impairment to communicate using voice com-
 19 munication services by wire or radio. Such term in-
 20 cludes services that enable two-way communication be-
 21 tween an individual who uses a TDD or other non-
 22 voice terminal device and an individual who does not
 23 use such a device.

24 “(b) AVAILABILITY OF TELECOMMUNICATIONS
 25 RELAY SERVICES.—

1 “(1) *IN GENERAL.*—In order to carry out the
2 purposes established under section 1, to make available
3 to all individuals in the United States a rapid, effi-
4 cient nationwide communication service, and to in-
5 crease the utility of the telephone system of the Nation,
6 the Commission shall ensure that interstate and intra-
7 state telecommunications relay services are available,
8 to the extent possible and in the most efficient manner,
9 to hearing-impaired and speech-impaired individuals
10 in the United States.

11 “(2) *REMEDIES.*—For purposes of this section,
12 the same remedies, procedures, rights, and obligations
13 under this Act that are applicable to common carriers
14 engaged in interstate communication by wire or radio
15 are also applicable to common carriers engaged in
16 intrastate communication by wire or radio and
17 common carriers engaged in both interstate and intra-
18 state communication by wire or radio.

19 “(c) *PROVISION OF SERVICES.*—Each common carri-
20 er providing telephone voice transmission services shall pro-
21 vide telecommunications relay services individually, through
22 designees, or in concert with other carriers not later than 2
23 years after the date of enactment of this section.

24 “(d) *REGULATIONS.*—

1 “(1) *IN GENERAL.*—*The Commission shall, not*
2 *later than 1 year after the date of enactment of this*
3 *section, prescribe regulations to implement this section,*
4 *including regulations that—*

5 “(A) *establish functional requirements,*
6 *guidelines, and operations procedures for telecom-*
7 *munications relay services;*

8 “(B) *establish minimum standards that shall*
9 *be met by common carriers in carrying out sub-*
10 *section (c);*

11 “(C) *require that telecommunications relay*
12 *services operate every day for 24 hours per day;*

13 “(D) *require that users of telecommunica-*
14 *tions relay services pay rates no greater than the*
15 *rates paid for functionally equivalent voice com-*
16 *munication services with respect to such factors as*
17 *the duration of the call, the time of day, and the*
18 *distance from point of origination to point of*
19 *termination;*

20 “(E) *prohibit relay operators from refusing*
21 *calls or limiting the length of calls that use tele-*
22 *communications relay services;*

23 “(F) *prohibit relay operators from disclosing*
24 *the content of any relayed conversation and from*

1 *keeping records of the content of any such conver-*
 2 *sation beyond the duration of the call; and*

3 “(G) *prohibit relay operators from intention-*
 4 *ally altering a relayed conversation.*

5 “(2) *TECHNOLOGY.—The Commission shall*
 6 *ensure that regulations prescribed to implement this*
 7 *section encourage the use of existing technology and do*
 8 *not discourage or impair the development of improved*
 9 *technology.*

10 “(3) *JURISDICTIONAL SEPARATION OF COSTS.—*

11 “(A) *IN GENERAL.—The Commission shall*
 12 *prescribe regulations governing the jurisdictional*
 13 *separation of costs for the services provided pursu-*
 14 *ant to this section.*

15 “(B) *RECOVERING COSTS.—Such regula-*
 16 *tions shall generally provide that costs caused by*
 17 *interstate telecommunications relay services shall*
 18 *be recovered from the interstate jurisdiction and*
 19 *costs caused by intrastate telecommunications*
 20 *relay services shall be recovered from the intra-*
 21 *state jurisdiction.*

22 “(C) *JOINT PROVISION OF SERVICES.—To*
 23 *the extent interstate and intrastate common carri-*
 24 *ers jointly provide telecommunications relay serv-*

1 ices, the procedures established in section 410
2 shall be followed, as applicable.

3 “(4) *FIXED MONTHLY CHARGE.*—The Commis-
4 sion shall not permit carriers to impose a fixed month-
5 ly charge on residential customers to recover the costs
6 of providing interstate telecommunication relay
7 services.

8 “(5) *UNDUE BURDEN.*—If the Commission finds
9 that full compliance with the requirements of this sec-
10 tion would unduly burden one or more common carri-
11 ers, the Commission may extend the date for full com-
12 pliance by such carrier for a period not to exceed 1 ad-
13 ditional year.

14 “(e) *ENFORCEMENT.*—

15 “(1) *IN GENERAL.*—Subject to subsections (f)
16 and (g), the Commission shall enforce this section.

17 “(2) *COMPLAINT.*—The Commission shall re-
18 solve, by final order, a complaint alleging a violation
19 of this section within 180 days after the date such
20 complaint is filed.

21 “(f) *CERTIFICATION.*—

22 “(1) *STATE DOCUMENTATION.*—Each State may
23 submit documentation to the Commission that describes
24 the program of such State for implementing intrastate
25 telecommunications relay services.

1 “(2) *REQUIREMENTS FOR CERTIFICATION.*—

2 *After review of such documentation, the Commission*
 3 *shall certify the State program if the Commission de-*
 4 *termines that the program makes available to hearing-*
 5 *impaired and speech-impaired individuals either direct-*
 6 *ly, through designees, or through regulation of intra-*
 7 *state common carriers, intrastate telecommunications*
 8 *relay services in such State in a manner that meets the*
 9 *requirements of regulations prescribed by the Commis-*
 10 *sion under subsection (d).*

11 “(3) *METHOD OF FUNDING.*—*Except as provided*
 12 *in subsection (d), the Commission shall not refuse to*
 13 *certify a State program based solely on the method*
 14 *such State will implement for funding intrastate tele-*
 15 *communication relay services.*

16 “(4) *SUSPENSION OR REVOCATION OF CERTIFI-*
 17 *CATION.*—*The Commission may suspend or revoke*
 18 *such certification if, after notice and opportunity for*
 19 *hearing, the Commission determines that such certifi-*
 20 *cation is no longer warranted.*

21 “(g) *COMPLAINT.*—

22 “(1) *REFERRAL OF COMPLAINT.*—*If a complaint*
 23 *to the Commission alleges a violation of this section*
 24 *with respect to intrastate telecommunications relay*
 25 *services within a State and certification of the program*

1 of such State under subsection (f) is in effect, the
2 Commission shall refer such complaint to such State.

3 “(2) *JURISDICTION OF COMMISSION.*—After re-
4 ferring a complaint to a State under paragraph (1), the
5 Commission shall exercise jurisdiction over such com-
6 plaint only if—

7 “(A) final action under such State program
8 has not been taken on such complaint by such
9 State—

10 “(i) within 180 days after the com-
11 plaint is filed with such State; or

12 “(ii) within a shorter period as pre-
13 scribed by the regulations of such State; or

14 “(B) the Commission determines that such
15 State program is no longer qualified for certifica-
16 tion under subsection (f).”.

17 (b) *CONFORMING AMENDMENTS.*—The Communica-
18 tions Act of 1934 (47 U.S.C. 151 et seq.) is amended—

19 (1) in section 2(b) (47 U.S.C. 152(b)), by strik-
20 ing “section 224” and inserting “sections 224 and
21 225”; and

22 (2) in section 221(b) (47 U.S.C. 221(b)), by
23 striking “section 301” and inserting “sections 225 and
24 301”.

1 **TITLE V—MISCELLANEOUS**

2 **PROVISIONS**

3 **SEC. 501. CONSTRUCTION.**

4 (a) *REHABILITATION ACT OF 1973.*—*Nothing in this*
 5 *Act shall be construed to reduce the scope of coverage or apply*
 6 *a lesser standard than the coverage required or the standards*
 7 *applied under title V of the Rehabilitation Act of 1973 (29*
 8 *U.S.C. 790 et seq.) or the regulations issued by Federal*
 9 *agencies pursuant to such title.*

10 (b) *OTHER LAWS.*—*Nothing in this Act shall be con-*
 11 *strued to invalidate or limit any other Federal law or law of*
 12 *any State or political subdivision of any State or jurisdiction*
 13 *that provides greater or equal protection for the rights of indi-*
 14 *viduals with disabilities than are afforded by this Act.*

15 (c) *INSURANCE.*—*Titles I through IV of this Act shall*
 16 *not be construed to prohibit or restrict—*

17 (1) *an insurer, hospital or medical service compa-*
 18 *ny, health maintenance organization, or any agent or*
 19 *entity that administers benefit plans, or similar organi-*
 20 *zations from underwriting risks, classifying risks, or*
 21 *administering such risks that are based on or not in-*
 22 *consistent with State law; or*

23 (2) *a person or organization covered by this Act*
 24 *from establishing, sponsoring, or observing the terms of*
 25 *a bona fide benefit plan that are based on underwriting*

1 *risks, classifying risks, or administering such risks*
 2 *that are based on or not inconsistent with State law;*
 3 *Provided, that paragraphs (1) and (2) shall not be used as a*
 4 *subterfuge to evade the purposes of titles I, II, and III.*

5 **SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.**

6 (a) *RETALIATION.*—*No individual shall discriminate*
 7 *against any other individual because such other individual*
 8 *has opposed any act or practice made unlawful by this Act or*
 9 *because such other individual made a charge, testified, assist-*
 10 *ed, or participated in any manner in an investigation, pro-*
 11 *ceeding, or hearing under this Act.*

12 (b) *INTERFERENCE, COERCION, OR INTIMIDATION.*—
 13 *It shall be unlawful to coerce, intimidate, threaten, or inter-*
 14 *fere with any person in the exercise or enjoyment of, or on*
 15 *account of his or her having exercised or enjoyed, or on ac-*
 16 *count of his or her having aided or encouraged any other*
 17 *person in the exercise or enjoyment of, any right granted or*
 18 *protected by this Act.*

19 (c) *REMEDIES AND PROCEDURES.*—*The remedies and*
 20 *procedures available under sections 106, 205, and 308 of this*
 21 *Act shall be available to aggrieved persons for violations of*
 22 *subsections (a) and (b).*

23 **SEC. 503. STATE IMMUNITY.**

24 *A State shall not be immune under the eleventh amend-*
 25 *ment to the Constitution of the United States from an action*

1 *in Federal court for a violation of this Act. In any action*
 2 *against a State for a violation of the requirements of this Act,*
 3 *remedies (including remedies both at law and in equity) are*
 4 *available for such a violation to the same extent as such rem-*
 5 *edies are available for such a violation in an action against*
 6 *any public or private entity other than a State.*

7 **SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**
 8 **PORTATION BARRIERS COMPLIANCE BOARD.**

9 (a) *ISSUANCE OF GUIDELINES.*—Not later than 6
 10 months after the date of enactment of this Act, the Architec-
 11 tural and Transportation Barriers Compliance Board shall
 12 issue minimum guidelines that shall supplement the existing
 13 *Minimum Guidelines and Requirements for Accessible*
 14 *Design for purposes of titles II and III.*

15 (b) *CONTENTS OF GUIDELINES.*—The guidelines
 16 issued under subsection (a) shall establish additional require-
 17 ments, consistent with this Act, to ensure that buildings, fa-
 18 cilities, and vehicles are accessible, in terms of architecture
 19 and design, transportation, and communication, to individ-
 20 uals with disabilities.

21 **SEC. 505. ATTORNEY'S FEES.**

22 *In any action or administrative proceeding commenced*
 23 *pursuant to this Act, the court or agency, in its discretion,*
 24 *may allow the prevailing party, other than the United States,*
 25 *a reasonable attorney's fee, including litigation expenses, and*

1 *costs, and the United States shall be liable for the foregoing*
2 *the same as a private individual.*

3 **SEC. 506. TECHNICAL ASSISTANCE.**

4 (a) *PLAN FOR ASSISTANCE.*—*The Attorney General,*
5 *in consultation with the Secretary of Transportation, the*
6 *Chairman of the Federal Communications Commission, and*
7 *the Secretary of Commerce shall, within 180 days of the en-*
8 *actment of this Act, develop and implement a plan to assist*
9 *entities covered under this Act in understanding the responsi-*
10 *bilities of such entities under this Act.*

11 (b) *AGENCY ASSISTANCE.*—*The Attorney General is*
12 *authorized to obtain the assistance of other Federal agencies*
13 *in carrying out the responsibilities as described in subsection*
14 *(a).*

Calendar No. 216

101ST CONGRESS
1ST SESSION

S. 933

[Report No. 101-116]

A BILL

To establish a clear and comprehensive prohibition of
discrimination on the basis of disability.

AUGUST 30, 1989

Reported, under authority of the order of the Senate of
August 2 (legislative day, January 3), 1989, with an
amendment